No. 2810

IN THE

# United States Circuit Court of Appeals

**For the Ninth Circuit**

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EDWARD WHITE, Commissioner of Immigration at the Port of San Francisco,

*Appellant,*

vs.

WONG QUEN LUCK,

*Appellee.*

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## BRIEF FOR APPELLEE.



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JOSEPH P. FALLON,
*Attorney for Appellee.*

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*Filed this.....day of March, 1917.*

*FRANK D. MONCKTON, Clerk.*

*By.....Deputy Clerk.*

PERNAU PUBLISHING COMPANY

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As stated in appellant's brief the appellee, Wong Quen Luck, was born in China, and is the son of a native born citizen of the United States. He made application to be admitted to the United States in the month of June, 1915, in order to join his father, who is a resident of the State of Texas, and was denied the right to land by the Secretary of Labor.

The ground for said denial was based upon certain alleged discrepancies appearing in the testimony offered by the father and the appellee at a hearing held at Angel Island, California, before the immigration officials.

A petition for a writ of habeas corpus was filed in the United States District Court for the Northern District of California, and after a full hearing, the Court ordered his discharge.

The Commissioner of Immigration has appealed from this order on the grounds that the hearing was full and fair before the Department of Labor, and that he nor any other official of the Department of Labor had committed any abuse of discretion or exercised any unfair or arbitrary action in the matter.

In the petition for the writ of habeas corpus, certain allegations are made based upon information and belief to which counsel for appellant, on page "five" of his brief, calls attention, as follows:

> "There is an allegation on page 5 of the transcript as follows:
>
> " 'That, thereafter, as your petitioner is informed and believes, and therefore alleges the fact to be, the inspector who took said testimony under the direction of said Commissioner, strongly recommended that the said Wong Quen Luck be admitted to the United States, and that he be permitted to reside therein, and that the said application for admission be granted, and said petitioner alleges upon information and belief that the said recommendations were so made for the reason that the said testimony so submitted clearly established the right of said detained person to enter the United States and reside therein.' "

Had counsel been properly informed concerning the facts of this case, he certainly would not have

made such an allegation, for there was no such report in the record".

In explanation of this allegation, and which explanation was also made to the lower Court at the hearing held therein and not denied, the Department of Labor refused to permit counsel to examine the record for the purpose of ascertaining whether the said detained had good grounds for a writ of habeas corpus and therefore he was left wholly in the dark as to whether the said allegation was true or not.

The appellee was held incommunicado by the immigration officers and no opportunity was given anyone to see him or the record. When he was brought into the presence of the Court under an immigration guard he alleged that the official interpreter who had interrogated him at the hearing before the Department of Labor could not speak his dialect properly and that accounted for the slight and trivial variations in the testimony offered by himself and his father. Both the District Attorney's Office and the Department of Labor were represented at the time the statement was made to the Court and it was agreed that the Court have the detained questioned through the official Court interpreter, D. D. Jones. The District Attorney thereupon put the detained through a rigid cross-examination. No record of this examination was taken for the reason that whilst not explicitly, it was tacitly understood that no appeal would be

prosecuted from the final decision of the Court. This examination so clearly demonstrated that a mistake had been made in the interpretation that the Court ordered the detained's discharge. A stipulation as to the facts was subsequently agreed upon by the counsel for the detained and the District Attorney as follows:

> *"In the District Court of the United States, in and for the Northern District of California, First Division.*
>
> No. 15395
>
> In the Matter of the Application of Wong Hong, for a Writ of Habeas Corpus for and on behalf of Wong Quen Luck.
>
> Stipulation.
>
> It is hereby stipulated and agreed, by and between the respective parties in the above entitled cause, that the facts appearing before said court on the 12th day of November, A. D. 1915, at which time the said court permitted the said Wong Quen Luck, on hearing on the return to writ of habeas corpus, to take the stand and explain certain discrepancies in his testimony and the testimony of his alleged father, are as follows:
>
> The detained, Wong Quen Luck, contended that the discrepancies which appeared in his testimony and the testimony of his father at the hearing had before the immigration officials, and upon which he was not permitted to enter the United States, was due to the fact that the official interpreter, who acted for the immigration officials at the time that the testimony of the said applicant was taken spoke a different dialect from that spoken by the said detained, and because of the fact that the said official interpreter spoke a dialect which was

not understood by the detained, the hearing granted him upon his application to enter the United States was unfair.

Upon the foregoing statement, the Honorable M. T. Dooling, judge of the above entitled court, permitted said detained to take the stand, and the answers of the said detained to the various questions prepounded to him by his counsel and the United States Attorney's office, through the official Chinese court interpreter, namely, D. D. Jones, explained the discrepancies satisfactorily to the court and the said detained was ordered released.

Dated this 17th day of May, A. D. 1916.

JOHN W. PRESTON,
United States Attorney.
CASPAR A. ORNBAUM,
Assist. United States Att.
JOSEPH P. FALLON,
Attorney for Wong Quen Luck.

(Endorsed): Filed May 18, 1916.
W. B. MALING, Clerk.
By C. W. Calbreath,
Deputy Clerk."

Nowhere does it appear that objection was made to the District Court's taking jurisdiction of the matter and in fact it appeared at the hearing before said Court that all parties concerned seemed anxious that the matter be considered fully to determine whether there was any merit to the charge of mistake and unfairness. That a mistake had been made in the interpretation of the dialect was so clearly demonstrated by the cross-examination of the detained conducted by the District Attorney assisted by the immigration official Inspector, and it so conclusively established the

relationship claimed, that the Court determined that a mistake had been made and ordered the discharge of the detained. Having apparently been anxious to demonstrate in Court the utter absurdity of the claims of the detained, that he had been unfairly treated in the interpretation before the Department of Labor, it is in decidedly bad form for them now to complain after they had been routed and the decision of the Court was against them.

The detained is the son of a citizen of the United States. He was examined without the presence of counsel and held during all the time his case was under consideration both by the Department of Labor and the Court, under close surveillance by the immigration officials, and for a few slight variations in the testimony of his father and himself was denied the right to land in this country. He had no opportunity to disclose the real facts to his counsel as to the mistakes in interpretation, and it was only in open Court that he was permitted so to do.

Counsel for the Government contends that the Court had no right to take jurisdiction of the matter. Our contention is that whether or not the weight of the evidence in substantial conflict at the hearing is a question of fact within the exclusive jurisdiction of the offices of the Department of Labor, nevertheless the question of fraud or mistake is one of which the Courts can take jurisdiction, and are not without power of review. That was not a

fair hearing that permitted an interpreter to be employed that did not speak the same dialect as the detained, and allowed mistakes to be made which resulted in a false finding. The grounds for denial were trivial in the first instance, and there was no substantial evidence to support the charge and finding of the Department of Labor. Where injurious error in deciding a question is made by any executive or quasi-judicial officer or tribunal it is reviewable and remediable by the Courts. School of Magnetic Healing v. McNulty, 187 U. S. 94, 108, 23 Sup. Ct. 33; 47 L. Ed. 90. Interstate Commerce Commission v. Louisville and Nashville R. R. Co., 227 U. S. 88, 91, 33 Sup. Ct. 185, 57 L. Ed. 431 and cases cited; Howe v. Parker, 190 Fed. 738, 746, 111 C. C. A. 466, 474, and cases there cited.

In the absence of substantial evidence to sustain the same, the order of deportation is arbitrary and unfair and subject to judicial review. Whitfield v. Hanges, 222 Fed. 745, 751; McDonald v. Sier Tak Sam, 225 Fed. 710; Ex parte Sam Pui, 217 Fed. 456; Ex parte Chan Kam, 232 Fed. 855.

We respectfully urge that the judgment of the District Court be sustained.

Dated, San Francisco,
March 5, 1917.

JOSEPH P. FALLON,
Attorney for Appellee.